

Priestly Ministry after the Vatican II Revolution

Part I – Confessional Jurisdiction – Brief Version

by Eric Hoyle

hoyle.eric@gmail.com

Table of Contents

| | |
|--|----|
| Introduction | 1 |
| 1. The Question: Traditionalist Priests' Jurisdiction for Confessions | 1 |
| 2. Supplied Jurisdiction in the Code of Canon Law | 2 |
| 2.1. Danger of death | 3 |
| 2.2. Common error | 4 |
| 2.3. Positive and probable doubt of law or fact | 6 |
| 2.4. Right of Catholics to request the Sacraments from an excommunicate for any just cause | 7 |
| 2.5. Urgent necessity | 9 |
| 2.6. Conclusion on the Code of Canon Law | 11 |
| 3. Jurisdiction Supplied by a Higher Law | 11 |
| 3.1. Jurisdiction can only be delegated by an ecclesiastical superior | 13 |
| 3.2. Discussions of urgent cases contradict the theory of presumed jurisdiction | 15 |
| 3.2.1. Confessional jurisdiction couldn't be presumed even in danger of death | 17 |
| 3.3. Presumed jurisdiction contradicts the Code of Canon Law | 18 |
| 3.4. Presumed jurisdiction undermines ecclesiastical authority and order | 19 |
| 4. Conclusion | 20 |
| 5. References | 20 |

Introduction

What follows is a brief outline of the arguments presented in a much longer study.* It concerns the availability of confessional jurisdiction for traditionalist priests, i.e. those who profess to maintain the Catholic religion in opposition to the Vatican II religion (new Mass, new rites of Holy Orders, new Code of Canon Law, etc.) and are independent of the modernist “popes” and “bishops” who have taken over the physical structures of the Catholic Church.

It will generally be assumed that the priests in question are Catholics, validly ordained, adequately trained, of good character, and in good legal standing before the Church. Whether and to what extent this is true, is relevant, or can be known in the case of any particular priest will be left aside as outside the scope of the present study.

1. The Question: Traditionalist Priests' Jurisdiction for Confessions

In the Sacrament of Penance, a priest exercises the Church's power of binding and loosing, which is a function of spiritual government or *jurisdiction*. Unless he has jurisdiction over the penitent, a priest cannot validly absolve him in confession. This is a matter of divine law; it cannot be set aside in urgent cases.¹

* Long version is here: https://drive.google.com/file/d/1o8W83eU33_Ei-DE1MBf8O9xOSzxRqX5A/

1 Council of Trent sess. 14, chap. 7 (Denz. 903); Prümmer, *Manuale Theologiae Moral*, III. 408. (10th ed.)

All jurisdiction is either ordinary or delegated. Ordinary jurisdiction is attached to an office by law. Delegated jurisdiction is committed to a person, by one who has ordinary power. Supplied jurisdiction is delegated by law or custom; it is provided for the good of souls in particular cases in which jurisdiction would otherwise be lacking.

The majority of traditionalist clergy do not claim to have jurisdiction that is ordinary or is delegated *ab homine* (from a man). They lack ordinary jurisdiction because they do not possess an office such as bishop of a diocese or pastor of a parish. Many call themselves pastors, and some refer to their churches as parishes, but this is merely a colloquial usage, not a claim to an ecclesiastical office. For decades, practically all traditionalist priests did not claim any delegated jurisdiction *ab homine*; that is, they said they had not received faculties to hear confessions from a superior empowered to make such a grant. This is still true of many traditionalist priests, but it changed for the SSPX in 2016 when Jorge Bergoglio granted confessional jurisdiction to SSPX priests. However, the SSPX has consistently claimed to not need such a grant, and would continue to claim jurisdiction for confessions if the grant were rescinded, so this study is still relevant to their situation and their arguments.

It is possible for jurisdiction to be delegated tacitly. This occurs when an ecclesiastical superior, by some external action or inaction, manifests his will to confer jurisdiction upon one or many of his subjects, without saying so explicitly.² Traditionalist priests have received no such grant because they either have no superior with jurisdiction of his own that he could delegate (as for sedevacantists), or have not received a tacit grant from those whom they recognize as having authority.

Jurisdiction can also be delegated by *law or custom*, in which case it is called *supplied jurisdiction*. This is the means by which the vast majority of traditionalist clergy, throughout the post-Vatican II crisis, have claimed to have jurisdiction for confessions.

Apparently there is no pre-Vatican II *custom* by which jurisdiction for confessions would be supplied to traditionalist priests. For ecclesiastical authority to be totally absent or incommunicado for many years, or promulgating false doctrine and defective liturgy, is a most extraordinary situation for which no course of action was customary before the present crisis. There was also no custom by which jurisdiction is supplied to all priests for hearing confessions in urgent cases short of danger of death (more on these topics later).

Thus the supplied jurisdiction claimed by traditionalist priests must be *delegated by law*. There are various reasons why this might occur, to be discussed in the following section.

2. Supplied Jurisdiction in the Code of Canon Law

The 1917 Code of Canon Law is the first place to look for grants of supplied jurisdiction. We will examine five possible theories by which the Code may supply jurisdiction:

1. Danger of death
2. Common error
3. Positive and probable doubt of law or fact
4. Right to request the Sacraments from an excommunicate for any just cause
5. Urgent necessity

² Rev. Charles Augustine, *A Commentary on the New Code of Canon Law*, vol. IV, p. 277.

2.1. Danger of death

The Church supplies jurisdiction for any priest to hear the confession of a Catholic in danger of death, by canon 882:

When there is danger of death, any priest, even though not otherwise approved for hearing confessions, may validly and licitly absolve any penitent from whatever sins and censures, including those which are reserved and notorious, even though an approved priest may be present. But the rules laid down in canons 884 and 2252 must be observed.¹

Based on this canon, traditionalist priests receive supplied jurisdiction to absolve a penitent in danger of death. But most people are rarely in danger of death, so this canon does not supply jurisdiction for the majority of confessions heard by traditionalist priests.

Could the meaning of danger of death be broadened, to include those who face “spiritual death” because they will not have a suitable confessor for a long time? Such is definitely not the common teaching; it is not found in Aertnys-Damen, St. Thomas Aquinas, Augustine, Berutti, Bonacina, Cappello, Genicot-Salsmans, Hyland, Kelly, La Croix, Lehmkuhl, Merkelbach, Noldin, Prümmer, Sabetti-Barrett, Scavini, Schieler, Szal, Tanquerey.

The present writer has found no author who treats supplied jurisdiction in danger of death *at some length* who mentions the long-term lack of confessors as a situation equivalent to danger of death. The few who do express this opinion treat the topic *very briefly*. The opinion has so little support that there is no *doubt of law* in its favor.

St. Alphonsus Liguori regards as in danger of death *captives among the Infidels with small hope of liberty, if it is believed that they will have no other priests*.² Some have argued that the modern world is in an equivalent situation, having no suitable priests with confessional jurisdiction because nearly all of them defected to the Vatican II religion. But St. Alphonsus speaks of people who expect to never have a *priest* again, which is manifestly not the situation of those with routine access to traditionalist priests. It is even further removed from the situation of many traditionalists who believe that suitable confessors and even legitimate pastors exist among the Eastern rite clergy or conservative-minded Latin rite priests in good standing with the Vatican II church.

The purpose of supplied jurisdiction for those in danger of death is to facilitate a confession that might well be the penitent's last, *lest any may perish*.³ All of the authors thus far consulted are in harmony with this understanding. But for traditionalist priests to appeal to danger of death to justify hearing confessions of healthy people on a routine basis is clearly opposed to it.

It is noteworthy that a longer article on jurisdiction by Fr. Ramon Angles, SSPX admits that spiritual danger is not *danger of death* as comprehended by canon 882. Fr. Angles writes:

On the subject's part it is required to be in DANGER OF DEATH. Danger of death is not here to be understood as "danger of spiritual death," as some erroneously affirm. The law refers to a danger of physical death, the separation of body and soul. The reference to "spiritual death by sin" is in this matter totally gratuitous and misleading. "Danger of death" does not mean either that the person should be in his agony, which is no longer called *periculum mortis* but

¹ Augustine, *op. cit.*, vol. IV, p. 286

² St. Alphonsus Liguori, *Theologia Moralit*, VI. 561. (translated from Latin, citations omitted)

³ Council of Trent, Sess. XIV, *de poeniten.*, chap. 7. English from *Dogmatic Canons and Decrees*, pp. 103-04

articulum mortis. It is enough for him to be in a true danger, in which one can reasonably assume that death may follow soon, or even that he may lose permanently the use of his reason, becoming incapacitated to make his confession.⁴

We now have good reason to believe that traditionalist priests cannot obtain confessional jurisdiction on account of danger of death except in rare cases. Some other source of jurisdiction is needed for the vast majority of confessions that they are accustomed to hear.

2.2. Common error

The first part of Canon 209 supplies jurisdiction in cases of common error.

In common error or in positive and probable doubt either of law or of fact, the Church supplies jurisdiction for both the external and internal forum.⁵

Common error exists when *many* in a *distinct place or community reasonably believe* that a person is *duly authorized* to perform acts that require jurisdiction, when in fact he lacks such authorization. In such cases, the Church supplies the absent jurisdiction for the sake of the common good.⁶

The common error need not be an explicit belief that a priest *has jurisdiction*; rather, it suffices if the priest is thought to possess whatever authorization he needs for the functions he performs. For example, it would be sufficient to induce common error if a pastor were to announce from the pulpit that next week Fr. X will be substituting for him, because the people would naturally assume that the legal formalities to allow the substitute priest to perform his ministry would be taken care of. This holds true even if the people have no idea what those formalities are. Should it happen that through an oversight or any other cause unknown to the faithful, Fr. X is not granted jurisdiction for confessions, his absolutions would still be valid through supplied jurisdiction on account of common error.

There is a controversy among canonists as to whether an error must actually become common before jurisdiction is supplied. The traditional view is that many of the faithful must *actually make* an erroneous judgment, so that if asked, they would answer that such a priest is the pastor, is able to hear confessions, or something else along these lines. Some modern authors have proposed that the community need not actually err, but that “common error already exists when a public fact is posited which of its very essence is capable of leading into error, not one or a few, but all persons indiscriminately.”⁷ This is called interpretive error, or error *de iure*, because it is a legal theory whereby jurisdiction begins to be supplied before common error actually exists.⁸ Miaskiewicz discusses this controversy at length and makes a strong argument in favor of the traditional view.⁹

The controversy over common error *de facto* and *de iure* may be left aside here because it is not relevant to the case of traditionalist priests. This is so because both schools of canonists require an

4 Rev. Ramon Angles, *The Validity of Confessions & Marriages in the chapels of the Society of St. Pius X*, section 4.2

5 Augustine, *op. cit.*, vol. II, p. 188

6 cf. Rev. Francis S. Miaskiewicz, *Supplied Jurisdiction according to Canon 209*, pp. 163-76; Merkelbach, *Summa Theologiae Moralis*, III. 586 (8th ed.)

7 Vidal, *Ius Canonicum*, II, n. 381, cited by Miaskiewicz, *op. cit.*, p. 129

8 As a point of interest, Canon 144.1 of the 1983 Code of Revolutionary Law supplies jurisdiction in common error *de iure*, but the present author regards that Code as worthless.

9 cf. Miaskiewicz, *op. cit.*, pp. 115-56

error as to the fact that a person is *duly authorized*, meaning that he is acting within the normal channels of authority, having received ordinary or delegated jurisdiction in accordance with Church law. Since the vast majority of traditionalist priests make no such claim, but rather deny it, the faithful cannot reasonably believe that these priests have received jurisdiction through normal channels. Such a belief is also ruled out by their circumstances: the vast majority are independent of any bishop who claims ordinary jurisdiction, and carry on their ministry in places other than the established Catholic church buildings that the modernists took over. As none of this indicates an office or appointment through normal channels, the kind of common error in which jurisdiction would be supplied is not present.

An appeal to common error is also self-contradictory. Traditionalist priests state publicly that their jurisdiction is supplied *a iure* because of the emergency situation in the Church. If this is true, and is commonly believed in traditionalist circles, then there is no error at all; rather, the people commonly know the truth of the matter.

If common error is the basis for supplied jurisdiction in this now-decades-long crisis, it follows that erroneous ideas about the status of traditionalist priests must be perpetuated, or else the supply of jurisdiction will cease. Does any traditionalist priest, or anyone who attends their chapels believe this? Surely not.

One could argue that common error exists as to whether the law supplies confessional jurisdiction to traditionalist priests in the present emergency, and that such an error is sufficient to guarantee that such jurisdiction is indeed supplied. This is wrong because the Church does not supply in common error *on a matter of law*.¹⁰ Rather, the suppletory principle comes into effect in such cases only when there is a *positive and probable doubt* of law, as stated in the second part of Canon 209. From Miaskiewicz:

[I]t seems highly reasonable to conclude that the Church does not supply in common error about a clear and certain law. By way of illustration one may note the fact that the law clearly demands that a priest be duly authorized to hear confessions. Since this law is so clear, one could not term any common error concerning its existence as probable. Therefore the Church in all probability does not supply in cases of such common error. The Church supplies only in common error of fact, that is, in common error about the existence or the valid possession of a certain office or jurisdiction. Thus the common error must, first of all, be particularized, i.e., about a priest or bishop who is considered to possess some definite title of jurisdiction or to be legitimately exercising whatever jurisdictional title he might possess.¹¹

For example:

“A competent confessor comes into a convent and hears the confession of religious women in the proper place. The sisters all regard him as a properly authorized confessor. His acts are valid because he has faculties. And, in fact, in view of the consideration of him as confessor by the sisters, his acts would be valid even if he had no faculties. But, the moment he hears the confessions outside the proper place, he is arrogating to himself greater power than that of a *mere confessor*. For the Code requires the confessor of religious women to hear the confessions in a certain, legitimate place as a condition for validity. He is arrogating to himself a power that is over and above the powers of the

¹⁰ cf. Miaskiewicz, *op. cit.*, pp. 163-67

¹¹ Miaskiewicz, *op. cit.*, p. 167

office which he is correctly or erroneously supposed by the sisters to possess.

“Now, since an error of fact on the part of the sisters in regard to the priest’s faculty to hear their confessions might easily arise, it is not hard to see that in the event of such error, the Church supplies. However, if the sisters were to conclude that the priest, as simple confessor, was capable of hearing validly their confessions outside the properly designated place, it seems the Church would not supply. For, in such a case is verified an error of law. And unless there be a positive, probable doubt about the priest’s power to hear the confessions outside the legitimately designated place, confessions so heard will be invalid.”¹²

In summary, for common error to serve as a basis for supplied jurisdiction for traditionalist priests, they must be regarded as having received ordinary or delegated jurisdiction through normal channels, and they must exercise only the powers pertaining to their supposed office or appointment. Since traditionalist priests admit that they have no such office or appointment, jurisdiction cannot be supplied to them on account of common error.

2.3. Positive and probable doubt of law or fact

These grounds for supplied jurisdiction are also found in canon 209:

In common error or in positive and probable doubt either of law or of fact, the Church supplies jurisdiction for both the external and internal forum.

For a doubt to be positive and probable, it must rest upon sufficient grounds to gain the assent of a prudent man. This means that the doubt must have a firm objective basis. A doubt caused by personal ignorance, poor memory, light-mindedness, bad faith, or rashness would not be sufficient. In such cases the doubt is not about jurisdiction, but rather about the personal knowledge of the confessor, in which case the Church cannot be presumed to supply.¹³

This part of canon 209 does not give a stand-alone basis for supplied jurisdiction, as are, for example, danger of death and common error. Rather, it provides for perfect safety in the use of jurisdiction that the priest probably possesses *for one of the usual reasons*, by supplying it in the unlikely event that it is lacking. Its purpose is to assist the priest by freeing him from anxieties and scruples and giving him “an authorized reflex principle by which to attain to practical certitude when confronted with doubts arising from the theoretical interpretation or the practical application of a law.”¹⁴

For this canon to supply jurisdiction to traditionalist priests, there must be a strong but not compelling argument that they possess jurisdiction for some other reason. Thus its relevance to the present inquiry is to show that an argument that the Church supplies jurisdiction to traditionalist priests need not be absolutely conclusive, but only sufficiently well-grounded to gain the assent of a prudent man.

¹² Miaskiewicz, *op. cit.*, pp. 26-27

¹³ Miaskiewicz, *op. cit.*, pp. 187-88

¹⁴ Miaskiewicz, *op. cit.*, p. 178

2.4. Right of Catholics to request the Sacraments from an excommunicate for any just cause

This is based on Canon 2261, which states:

§ 1. One excommunicated is prohibited from confecting and administering licitly the Sacraments and Sacramentals, except for the exceptions that follow.

§ 2. The faithful, with due regard for the prescription of § 3, can for any just cause seek the Sacraments and Sacramentals from one excommunicated, especially if other ministers are lacking, and then the one who is excommunicate and approached can administer these and is under no obligation of inquiring the reasons from the one requesting.

§ 3. But from a banned (*vitandus*) excommunicate and from others excommunicated after a condemnatory or declaratory sentence has come, only the faithful in danger of death can ask for sacramental absolution according to the norm of Canons 882 and 2252 and even, if other ministers are lacking, other Sacraments and Sacramentals.¹⁵

Some have used this canon to argue that traditionalist priests must have jurisdiction for hearing confessions, saying that if even an excommunicate may be approached for the sacraments for any just cause, then surely a traditionalist priest may likewise be approached, and canon 2261 will supply jurisdiction as needed.

This is a seat-of-the-pants theory with no support from approved authors. In fact, there is no need for canon 2261 to supply jurisdiction for the cases it mentions, because one may be excommunicated and yet retain his ecclesiastical office and jurisdiction. The Code itself says so:

Canon 2264

Acts of jurisdiction, whether for the external forum or the internal forum, placed by one excommunicated are illicit; and if a condemnatory or declaratory sentence has been laid down, they are also invalid with due regard for the prescription of Canon 2261, § 3; otherwise, they are valid and, indeed, are even licit if they are sought by a member of the faithful according to the norm of the mentioned Canon 2261, § 2.

Canon 2266

After a condemnatory or declaratory sentence, one excommunicated remains deprived of the fruits of dignity, office, benefice, pension, and duty if he should have one in the Church; and a banned (*vitandus*) [excommunicate is deprived] of the dignity, office, benefice, pension, and duty itself.¹⁶

Cappello explains further:

151. *5º One excommunicated is forbidden the exercise of ecclesiastical offices or duties (can. 2263).*

¹⁵ Augustine, *op. cit.*, vol. VIII, pp. 179-80; Dr. Edward Peters, *The 1917 or Pio-Benedictine Code of Canon Law in English Translation*, p. 719

¹⁶ Augustine, *op. cit.*, vol. VIII, pp. 187, 192; cf. Peters, *op. cit.*, p. 720

a) An office is taken here both in the *strict* and in the *broad sense*, i.e. for any duty whatsoever, that is legitimately exercised for a spiritual end, by the norm of can. 145, § 1.

b) One who is *simply* excommunicated, of whom we speak, does not lose his ecclesiastical office or duty; he is only forbidden the exercise of it, as it is unfitting for ecclesiastical duties to be lawfully performed by one who is separated from the communion of the faithful.

c) This prohibition is *gravely binding per se*; [but] sometimes *per accidens* the guilt will be light or none at all.

d) Acts that are performed, although illicit, nevertheless are valid.¹⁷

And Merkelbach says the same:

As none may be injured in his rights by the malice of another, thus it is licit, and sometimes obligatory, to request the sacraments from an evil minister, if there is a just cause, especially in the absence of another who can or will administer [them] (can. 2261, § 2). Any reasonable cause is sufficient, even a light one, if there is question of a *toleratus* [excommunicated] minister who *ex officio* is bound to minister, as when a parishioner wishes to receive the sacraments according to Christian custom; if [there is question of] other ministers, a somewhat graver cause is required, ...¹⁸

It is thus clear that to incur an excommunication does not result in automatic loss of office, and that before a declaratory or condemnatory sentence, one who is excommunicated retains and may validly exercise his ordinary jurisdiction. Merkelbach also mentions that excommunication does not cause the loss of *delegated* jurisdiction before a declaratory or condemnatory sentence.¹⁹

It is now clear that there is no need for canon 2261 to supply jurisdiction. In addition, there is strong evidence that canon 2261 cannot supply jurisdiction:

1. Direct statements from approved authors:

Ayrinhac: An excommunicated ecclesiastic is forbidden to administer the sacraments and sacramentals except in the cases to be explained. This prohibition affects only the lawfulness of the act, which remains valid unless it be null for want of jurisdiction, as might happen with absolution.²⁰

Coronata: This canon's prohibition affects only the liceity of confession and the administration of the Sacraments, not the validity, as the canon makes clear to the reader.²¹

2. The standard of “any just cause,” given in canon 2261, § 2 as allowing the licit exercise of jurisdiction, is easy to satisfy. Cappello says that even a light cause, such as for peace of soul or to foster piety, is sufficient.²² Augustine says, “any reason may be called just which promotes devotion or wards off temptations or is prompted by real convenience, for instance, if one does

¹⁷ Cappello, *De Censuris*, n. 151 (3rd ed.) (translated from Latin; citations omitted, bold added)

¹⁸ Merkelbach, *Sum. Theo. Moral.*, III. 79. 4b. (8th ed.) (translated from Latin; citations omitted)

¹⁹ Merkelbach, *Sum. Theo. Moral.*, III. nn. 580, 583 (8th ed.), commenting on canons 873, 183, and 207

²⁰ Ayrinhac, Rev. Henry A., *Penal Legislation in the New Code of Canon Law*, p. 122

²¹ Coronata, *Institutiones Iuris Canonici*, Vol. IV: De Delictis et Poenis. IV ed. [1955] n. 1774 (p. 211)

²² Cappello, *De Censuris*, n. 148 (3rd ed.)

not like to call another minister.”²³ But when there is question of confessing to a priest *in good standing* with *doubtful* jurisdiction (i.e., the priest has no solid reason to think he has jurisdiction), theologians require a *grave necessity* to make it licit, and jurisdiction is *not* supplied.²⁴ It is not credible that the Church would be far more willing to supply jurisdiction to an excommunicate than to a priest in good standing, so it only makes sense that the excommunicated priests to whom one may confess in virtue of canon 2261, § 2 already have jurisdiction.

3. Many authors who discuss canon 2261, § 2 do not mention the *source* of the jurisdiction that this law allows to be exercised licitly. It only makes sense for them to omit this point if there is nothing special about it — that is, if jurisdiction must be conferred in one of the usual ways. This goes against the idea that canon 2261, § 2 could supply jurisdiction.

At this point, it is clear that canon 2261, § 2 cannot supply jurisdiction.

2.5. Urgent necessity

The nature and consequences of urgent necessity are discussed by approved authors. The following are some situations that are sufficiently urgent to justify an extraordinary course of action:²⁵

- The need to satisfy the precept of annual confession or of Easter communion
- The opportunity to gain an important indulgence
- Danger of great loss to the penitent, including loss of reputation were he not to publicly offer Mass or receive Communion as expected
- Danger of violating the seal of Confession
- The hardship of remaining in mortal sin for a long time if absolution is deferred
- Danger of revealing an accomplice to one's sin
- The presence of a large group of the faithful who need and expect to receive the sacraments

The Code of Canon Law makes many exceptions to normal procedure for cases of urgent necessity.²⁶ Several of these grant favors to confessors, which shows that the legislator has taken thought to facilitate the hearing of Confessions in urgent necessity. But nowhere does the Code supply jurisdiction to all priests for hearing confessions in urgent necessity short of danger of death. The absence of such a provision shows that the lawgiver *did not* intend to supply jurisdiction in such circumstances *by a provision of Canon law*.

This is not presented here as proof that supplied jurisdiction is never available in such cases, but only that canon law does not supply it.

Canons 892 and 856 lend support to this conclusion. Canon 892 speaks of the duty to hear confessions:

²³ Augustine, *op. cit.*, vol. VIII, p. 182

²⁴ cf. Rev. James P. Kelly, *The Jurisdiction of the Confessor According to the Code of Canon Law*, pp. 144-45 and Miaskiewicz, *op. cit.*, p. 298

²⁵ cf. Miaskiewicz, *op. cit.*, p. 298; Rev. Caspar Schieler, *Theory and Practice of the Confessional*, pp. 203-07, 304-05

²⁶ For instance, in canons 98.1, 138, 139.3, 338.3, 367.3, 382, 465, 607, 691.3, 734, 735, 738.1, 741, 766.4, 771, 806, 807, 817, 822.4, 845.2, 848.2, and 851.2

Canon 892

§ 1. Pastors and others entrusted with the care of souls, by virtue of their office are strictly obliged in justice to hear the confessions of the faithful committed to their care as often as the latter reasonably demand to be heard. This obligation, which is personal, may be complied with through a substitute.

§ 2. In urgent cases all confessors and in case of danger of death, all priests, are obliged in charity to hear confessions.²⁷

The term *confessors*, as used in canon law, refers to priests who have jurisdiction for hearing confessions either by virtue of their office or by delegation from a competent superior.²⁸ Only *confessors* are said to have an obligation in charity to hear confessions in urgent cases. *All priests* are placed in a separate category as having this obligation on behalf of penitents in danger of death. But if jurisdiction for confessions were supplied to all priests in cases of urgent necessity, then charity would make the same demands of them as of approved confessors. Their lack of an obligation in charity shows that confessional jurisdiction is not supplied to non-confessor priests on account of urgent necessity.

This is confirmed by Cappello:

737. Obligation in charity. – 1. Canon 892, § 2 says well: “When necessity urges, all confessors are bound by the obligation in charity to hear the confessions of the faithful, and in danger of death all priests [are so bound].”

Thus the obligation *in charity* of hearing confessions binds all priests, but in different ways. *Confessors* are *always* bound, i.e. both in danger of death, and outside it; priests *who are not confessors*, i.e. not approved, [are bound] only in danger of death, because only then can they absolve validly and licitly.²⁹

Canon 856 also implies that jurisdiction for confessions is not supplied on account of urgent necessity.

Canon 856: No one who is conscious of a mortal sin, no matter how sorry or contrite he may feel, is allowed to receive Holy Communion without having previously gone to confession. In case of urgent necessity, when no suitable confessor is at hand, such a one must make an act of perfect contrition before approaching the Sacred Table.³⁰

²⁷ Augustine, *op. cit.*, vol. IV, pp. 307-09. The English version is not a strict translation, but it expresses the sense.

²⁸ Kelly, *op. cit.*, p. 151: “[T]he powers of absolving and the powers of dispensing in the internal sacramental forum which the Code grants to all *confessors* in certain circumstances, will be examined. **In order to avail himself of these powers, it is necessary that the priest be possessed of ordinary or delegated jurisdiction to hear confessions, for only then is he to be considered a confessor.** Therefore, if the priest has not an office to which the law has attached ordinary jurisdiction for the internal sacramental forum, it is necessary that he shall have received the faculty *ad audiendas confessiones* from his competent superior before he may validly avail himself of the following powers granted by the Code.” (bold added) Cappello, *De Sacramentis*, II-1. n. 580 (3rd ed.): “*Any confessor* ... can absolve in these circumstances. Therefore it is necessary that the priest has already been approved for hearing confessions either by reason of [his] office, e.g. of parish priest, or otherwise, according to the general rules of approbation with regard to time, place, persons, etc.; or at least that he be reasonably regarded as such, so that the Church supplies on account of common error as provided by canon 209.”

²⁹ Cappello, *De Sacramentis*, II-1. n. 737. (3rd ed.) (translated from Latin; citations omitted)

³⁰ Augustine, *op. cit.*, vol. IV, pp. 232-33

If all priests are able to absolve in urgent cases, then this canon should have said that in urgent cases the penitent may confess to any priest, not only to a *confessor*. Or if the law might omit this detail in the interest of brevity, one would expect to find it in approved commentaries.

Augustine's brief commentary conspicuously omits to say that any priest may hear one's confession in urgent necessity:

... *Copia confessorii* must be understood of any confessor with the necessary faculties who is not an accomplice of the penitent. Theologians say that the repugnance to, or impossibility of going to confession must be such as is not directly connected with the act itself. Urgent necessity of receiving Holy Communion exists when one has to fulfill the paschal obligation, and before contracting marriage.³¹

The more detailed commentaries on the availability of a confessor propose the same doctrine, which gives no support to the idea that jurisdiction is supplied on account of urgent necessity.

2.6. Conclusion on the Code of Canon Law

It seems that there is no sound argument by which the Code itself can be said to supply jurisdiction to traditionalist priests for hearing confessions outside of danger of death. It has been shown that:

- A penitent in danger of death may be validly absolved by any priest. Danger of death does not include cases of purely spiritual danger, which are rightly classified as cases of urgent necessity.
- Common error, in the sense required for supplied jurisdiction, is not present.
- The just request of the faithful allows certain excommunicates to licitly employ the jurisdiction they already possess, but does not cause jurisdiction to be supplied to anyone.
- The Code does not supply jurisdiction for confessions on account of urgent necessity.

Thus, if jurisdiction is supplied to traditionalist priests to give absolution to those not in danger of death, it must have some other source than canon law.

3. Jurisdiction Supplied by a Higher Law

If confessional jurisdiction is not supplied to traditionalist priests by ecclesiastical law or custom, one might argue that it is granted by virtue of a higher law or principle, for the good of souls. One argument of this kind was advanced by Rev. Anthony Cekada in the article *Traditional Priests, Legitimate Sacraments*. The concept finds favor among various groups of traditionalists, whose common sense tells them that confessional jurisdiction must be supplied to all priests in our times for one reason or another, because God is good and is not a legalist.

The argument goes something like this:

1. All law must be reasonable and must promote the good of souls. St. Thomas defines law as *an ordinance of reason for the common good, made by him who has care of the community, and*

³¹ Augustine, *op. cit.*, vol. IV, pp. 233

promulgated.¹ Because a human lawgiver cannot anticipate all possible contingencies, and because it is not practical for statutory law to provide for every eventuality, laws cease to bind when in the circumstances their observance would cause a notable harm.

2. For the Church, *the salvation of souls is the supreme law*. Lesser ecclesiastical laws that conflict with this supreme law should be set aside.
3. The mind of the Church is to provide extraordinary remedies for extraordinary dangers, to the extent this is possible. Supplied jurisdiction, which the Church is indeed able to provide, is just this kind of remedy.
4. Therefore, confessional jurisdiction is extraordinarily supplied to traditionalist priests for all penitents in all circumstances, because this provides a great and much-needed help to the salvation of many souls. This can be *presumed* to follow from the nature and purpose of the Church, and of the divine law. No act of delegation by human ecclesiastical authority is needed; rather, jurisdiction is conferred by the Church herself, or the mind of the Church, or by Jesus Christ Himself.

Points #1-3 are true and should not be controversial. Point #4 is apparently false.

Perhaps the strongest argument against presumed jurisdiction (a fitting name for the argument just presented) is that approved authors do not teach it, but rather contradict it quite often. If it were true, they would surely discuss it and would apply it to many concrete cases, as it would have frequent practical application.

Thus it is fitting to quote John Daly, a witness to the present crisis and the theory of presumed jurisdiction invented in response to it, who addresses this theory explicitly:

5. In no circumstances whatever can any Catholic priest possess jurisdiction which the pope formally refuses him, whether or not the pope's refusal is founded on good motives, because the pope necessarily has immediate, ordinary and supreme power over all the faithful.
6. Supplied jurisdiction is supplied precisely because a pope has declared that any priest finding himself in certain stated circumstances is to enjoy a certain stated power of jurisdiction.
- 7. There is no principle known to Canon Law or theology according to which any jurisdiction that would be very useful for some or many souls is necessarily supplied. On the contrary, if this supply is not mentioned in any canonical text, it belongs to the realm of make-believe.** For instance, the Holy See *can* grant to a simple priest the power to confect the Oil of the Sick necessary for Extreme Unction, but it has been held that no matter how great the necessity (and valid Extreme Unction can be crucial to salvation when a dying sinner falls unconscious with attrition but without manifesting the desire to confess) a simple priest *cannot* validly confect the Oil unless he has received the exceptional power from the Holy See: a very useful piece of jurisdiction is thus *not* supplied.

...

14. Layfolk sometimes raise the idea that Our Lord supplies jurisdiction directly in our days, bypassing the need for Church authority. Concerning this idea, Pope Benedict XIV (1675-1758) quotes Cajetan: "Human actions are of two kinds, one of which relates to public duties,

¹ *Summa Theologica*, II-I. Q. 90, a. 4, p. 8 in cited edition

and especially ecclesiastical duties, such as preaching, celebrating Mass, pronouncing judicial decisions and the like; with respect to these, the question is settled in Canon Law (Cap. *cum ex injuncto*, cit. *de haereticis*) where it is said that “no credit is to be publicly given to him who says he has invisibly received a mission from God unless he confirms it by a miracle or a special testimony of Holy Scripture.” (Pope Benedict XIV, *Beatification and Canonization*, “On Heroic Virtue”, Chapter viii)²

The following sections argue against the above-described theory of presumed jurisdiction.

3.1. Jurisdiction can only be delegated by an ecclesiastical superior

The theory of presumed jurisdiction says that jurisdiction is delegated by *a principle of law* or by *the mind of the Church*. This seems to fit with the phrase “the Church supplies,” commonly used to describe all situations in which supplied jurisdiction is provided. However, the precise meaning is that an ecclesiastical superior, usually the Roman Pontiff, supplies jurisdiction for particular cases according to law or custom. Authors say that the delegator of jurisdiction must be a human being, which makes sense because (1) it is *his* jurisdiction that the delegate exercises, (2) jurisdiction is a public power, so it must be capable of public proof.

Kearney explains that *all* delegation of power, without any exception, requires an external action by the delegator:

Chapter VI – The Subject of Delegation

Delegation connotes a twofold person, the one who gives, the other who receives. It has already been suggested that power might accrue to the delegate from the law itself, without the apparent intervention of a delegator. But even in this case a delegator must be conceived, for the law which attributes power is ineffective in itself, unless behind the veil of legal terminology the legislator stands prepared to supply his authority. Delegation *a iure* is merely a legal fiction by which power, actually deriving from the legislator, is regarded as proceeding from common ecclesiastical law. Hence, in every act of delegation two ecclesiastical persons are involved. The person who gives of his power to another is the *active subject* of delegation; the person who receives, is the *passive subject* of delegation. They are so called since the relation between them is, philosophically that of *agens* to *patiens*.

Article I – The Active Subject of Delegation

The active subject of delegation is the delegator. When he delegates, he elicits a human act. Hence, all that is required by the law of nature that an act be truly human, is demanded for the validity of the act of delegation. Consequently, that ignorance which is termed antecedent, substantial error, absolute violence, and the like, vitiate the natural act by which power is committed to another. Grave fear does not naturally nullify the act, but by disposition of law an act placed under such fear unjustly inflicted, is rescindable at the will of the injured person. Moreover, an act of delegation, not invalid by reason of natural defects, may be rendered null by positive law. In this manner, since to delegate is to exercise jurisdiction, an

² John S. Daly, *Supplied Jurisdiction: the Bishop and the Axiom*, <https://romeward.com> (bold added)

act placed by an excommunicated person after the pronouncement of sentence, whether condemnatory or merely declaratory, is quite valueless. Similarly, a person suspended by condemnatory or declaratory sentence is incapable of delegating jurisdiction. **In a word, the act by which delegation is conferred, must be valid both naturally and juridically.**³

Delegated jurisdiction, by its nature, must have a delegator: an ecclesiastical superior who promulgates the law or approves the custom by which jurisdiction is granted. It is specifically *his* power, not some generic power of the Church, that is communicated to the delegate. As the pope is the legislator of the common law (i.e. law for the whole Church; principally the Code of Canon Law), all jurisdiction supplied by common law proceeds from the pope as delegator.

Various authors explain that all delegated jurisdiction, even that which is supplied (i.e. delegated by law or custom) comes from ecclesiastical superiors:

Miaskiewicz

...the Code simply states that under the circumstances of common error or of positive and probable doubt of fact and of law the Church, or more properly the Supreme Pontiff, from whom all jurisdiction emanates and from whom all common law has its origin, supplies the necessary jurisdiction.⁴

Coronata

Supplied jurisdiction is ordinary jurisdiction (because bestowed by law upon an office) or delegated (because bestowed by law, not upon an office) bestowed in an extraordinary manner, to him who does not enjoy it in ordinary cases, for the particular cases of common error and of positive and probable doubt.

It differs from ordinary jurisdiction in the way in which it is obtained, because that [ordinary jurisdiction] is not given except by certain customary formalities and rules, e.g. by a particular official to specific persons or by the bestowal of an office or by a special commission; indeed this **(supplied [jurisdiction]) without any formality is conferred *directly by the Church*, i.e. by the Roman Pontiff by law, without any formality**, to persons perhaps unfit and unworthy.⁵

Merkelbach

In addition to the power of Order, the power of jurisdiction over the penitent is required by divine law for valid absolution. [The power of jurisdiction] is not received by virtue of ordination alone, but **by concession of ecclesiastical superiors.**⁶

Billot

[I]t is to be noted that jurisdiction, even in the internal forum of Penance, is in no way given to the priest in virtue of ordination. Nor can there be any objection from what is said to the ordinand: *Receive the Holy Ghost; whose sins you forgive, they are forgiven them, and whose you retain, they are retained.* For by the force of the expressions, *you forgive, you retain*,

3 Kearney, *The Principles of Delegation*, pp. 75-76 (bold emphasis added)

4 Miaskiewicz, *op. cit.*, p. 28 (underline added)

5 Coronata, *Institutiones Iuris Canonici*, 4 ed., vol. 1, n. 291 (translated from Latin; bold added, footnotes omitted)

6 Merkelbach, *Summa Theologiae Moralis*, III. 577. (8th ed.) (translated from Latin; bold emphasis added)

these words are explained thus: *Those of your subjects* whose sins you forgive, etc. From this it only follows that the ordinand is deputed to exercise a sacramental judgment upon his subjects, if elsewhere he have them or when in the future he may have them. **Therefore it is to be held most certainly, that the aforesaid power of jurisdiction cannot be obtained by anyone except by the conferral of a pastoral office or by the delegation of prelates.**⁷

... Now a priest does not have jurisdiction except by the concession of the Pontiff and Bishops which the Holy Ghost has established to govern the Church of God.⁸

In summary, the theory of presumed jurisdiction attempts to find delegated jurisdiction where no human act of delegation has occurred, and thus violates the principles of delegation just explained.

A second and related problem with the theory of presumed jurisdiction is that every act of delegation must admit of public proof. This is according to natural law, because no one can reasonably demand that others recognize in him a delegated power to govern them without any evidence thereof. This dictate of reason is recognized by the Code of Canon Law:

Canon 200, § 2: He who claims to be delegated, bears the burden of proving the delegation.⁹

Such a proof is impossible for one who appeals to the theory of presumed jurisdiction, because by the nature of the case there is no evidence of an act of delegation. It seems that this ecclesiastical law cannot be set aside in urgent cases, because no circumstances can make it reasonable that *one who asserts a delegation without proof* should be held to possess delegated power *until this is disproved*. Such a presumption would be illogical and would make the faithful easy prey for wolves in sheep's clothing. In an urgent case one might well set aside the need to *see* the proof of delegation, but this does not affect the principle that the proof must exist.

Insofar as *presumed jurisdiction* involves a delegation that rests upon the mere assertion that *surely the Church would wish it*, this theory offends against natural reason and cannot be regarded as possible.

3.2. Discussions of urgent cases contradict the theory of presumed jurisdiction

Theological writers routinely discuss the proper course of action in urgent cases, but they never say that the Church or Jesus Christ will automatically supply jurisdiction in cases of grave necessity. Rather, they say things that contradict this theory. The more one reads about jurisdiction, the more clear and remarkable this pattern becomes. Here are a few examples:

Kelly

When the doubt is only negative, the Church will not supply jurisdiction if it is lacking, for such a doubt is equivalent to no doubt whatsoever. Therefore, a confessor would act illicitly in absolving with such a doubt, since he has no serious reason for thinking that he possesses jurisdiction and is exposing the sacrament to the danger of nullity. Of course the validity or invalidity of his absolution in this case will depend on the actual presence or absence of the doubtful jurisdiction.

⁷ Billot, *De Ecclesiae Sacramentis*, Book II, Thesis 23, §1, p. 232 (translated from Latin; bold emphasis added)

⁸ Billot, *De Ecclesiae Sacramentis*, Book II, Thesis 23, §2, p. 234 (translated from Latin)

⁹ Augustine, *op. cit.*, vol. II, p. 178

It is the opinion of many authors that it would be licit for a priest with a negative doubt regarding the possession of jurisdiction, to absolve conditionally **when the penitent is in grave necessity**, for although **the Church will not supply jurisdiction if it is missing**, yet if it happens to be present the absolution will be valid. The grave necessity in the case makes it licit, they argue, to expose the sacrament to the danger of nullity, for *sacramenta propter homines*.¹⁰

Miaskiewicz

Because the Church expressly, though implicitly, excludes negative doubt as a condition or as a possible occasion for the supplying of any jurisdiction which might be wanting, the validity of jurisdictional acts performed in such a doubt depends in each individual case upon the objective presence or absence of the necessary competence. And since the lack of any positive and probable reasons renders the validity of the action highly dubious, it is *per se* illicit for the priest to act on the basis of such a doubt. Unless there be grave necessity for the priest to use even such negative probability because of his inability to defer the ministration to the faithful and of their dire need of such ministration at the moment, the priest is definitely not to posit any jurisdictional acts in such situations. Canonists are generally agreed that the priest could, for example, conditionally absolve a penitent in merely negative doubt on the score that Christ has instituted the sacraments in token of his benevolent helpfulness to man. But they all demand a grave necessity for so doing. Such a necessity, according to St. Alphonsus, would be verified in the event that the obligation of yearly confession were binding, or the penitent were obliged to say Mass or receive Communion and could not postpone such actions without bringing disgrace upon himself, or a priest were obliged to say Mass in fulfillment of his duty. These causes other canonists have accepted up to this day. Cappello adds that a grave necessity, allowing the use of jurisdiction that is only negatively doubtful, would be verified if otherwise a penitent would lack absolution for a long time. Of course, whenever a priest acts on the basis of such a doubt, he is bound, *ceteris paribus*, to warn the penitent to go to confession as soon as possible to a confessor who certainly possesses jurisdiction.¹¹

Coronata

That is called presumed jurisdiction which is not possessed, which however one exercises in the name of an absent person whom one believes will certainly ratify the matter when he shall have learned that jurisdiction was exercised in his name.

This kind of jurisdiction can be exercised in matters which are valid immediately without ratification, as, for example, to baptize, to confirm, to anoint the sick, etc. for a just cause. For these things are forbidden lest there be injury to him who by his office is obliged to perform them, but there is no injury if it can reasonably be presumed that he will ratify the matter.

Even in things which by ratification can acquire validity, as, for example, in the bestowal of benefices, presumed jurisdiction can be used for a grave and most urgent cause in ordinary cases.

But it is never permitted to use it in matters which by ratification do not become valid, as in the absolution of sinners, in assistance at marriage, etc.¹²

10 Kelly, *op. cit.*, pp. 144-45 (citations omitted, bold added). “*sacramenta propter homines*” = the sacraments are for men

11 Miaskiewicz, *op. cit.*, p. 298

12 Coronata, *Institutiones Iuris Canonici*, 4 ed., vol. 1, n. 294 (translated from Latin; bold added, footnotes omitted)

Cappello

Jurisdiction to hear confessions *validly* must be granted *in writing* or *by words*, and that *expressly* (can. 879, § 1).

1° Thus is excluded a *presumed* grant, which does not really exist, and only would exist if it were requested. ...

4° Some regard as sufficient, in an urgent case, jurisdiction *presumed to be present*; such as “if one is morally certain that the Bishop has received the written request for jurisdiction, and that an affirmative response has been given either to his administrator or by letters, he may, when circumstances are urgent, hear confessions before the letters are received or he who conveys the order returns.”

This opinion, although some deny or doubt it, appears probable, as long as the two conditions are indeed present, namely that 1° he be *morally certain* that the Bishop *has received the written request*, and 2° he be *morally certain* that *he has given an affirmative response*.

5° Approbation of jurisdiction whether prudently presumed or even certain, after the confession has been made or heard, assuredly does not suffice. ...

7° According to all [authors], one may not presume any condition upon which, in a particular case, depends the validity of an act or of confessions.¹³

...

The Church does not actually supply [jurisdiction] in all those cases in which she is able to supply, but only in those in which she expressly, or at least tacitly, has manifested her will to supply.¹⁴

3.2.1. Confessional jurisdiction couldn't be presumed even in danger of death

There is a remarkable detail, quite conclusive against the possibility of presumed jurisdiction, in the writings of St. Alphonsus Liguori and St. Thomas Aquinas. Both lived long before the 1917 Code of Canon Law. In their times, the corpus of canon law consisted of various decrees given by various popes, which was rather inconvenient. Much that had the force of law was established by customary usage and the consensus of theologians and canonists.

St. Alphonsus and St. Thomas both held that a heretic or schismatic could not validly absolve a dying man, because in their times the Church did not supply jurisdiction for such a case. Here is St. Alphonsus' discussion of the point:

560. “For such a delegated power of absolving anyone of whatsoever sins, when he is near death or in danger of death (for these are accounted the same by the law; see Diana) is granted by the common law to any priest, even excommunicated and degraded, if another [priest] is not available (As also say Sanch. with Zambr. and others. *But read on*).

Question 4. Whether heretics, schismatics, and *vitandus* excommunicates can absolve a man near death, if another [priest] is not available?

The first opinion affirms it, and is held by Nav. Sanchez and Salm. with Suarez Vasq. Palud. Lugo Soto Sylv. etc. And they prove it from Trent where it says: *In the church of God it has*

¹³ Cappello, *De Sacramentis*, II-1, 398. (3rd ed.) (translated from Latin; citations omitted)

¹⁴ Cappello, *De Sacramentis*, II-1. n. 487 (3rd ed.); cited by Miaskiewicz, *op. cit.*, p. 145

always been observed, that there be no reservation at the point of death; and that therefore all priests may absolve all penitents whatsoever from every kind of sins and censures whatsoever.

The second opinion which is to be followed denies it, and is held by St. Thomas, who speaking of the aforesaid [priests] cut off from the communion of the church, says: *They can licitly baptize in a case of necessity, but in no case may they licitly consecrate the eucharist or confer the other sacraments.* Nor does it contradict [this second opinion] that the holy doctor says, *in no case ... licitly*, but not invalidly, because illicitly in our case is the same as invalidly; for **if the *vitandus* excommunicate could validly administer the sacraments to a sick man at the point of death, he would certainly be bound to administer them (especially the sacrament of penance) by the divine and natural law, which a human ecclesiastical law cannot stand against.** The same is said by Fagn. Petroc. Auctor with Croix Conc. (who calls this more probable, although the contrary is not improbable) and various others as below, who wrote before the council, during which time Nav. himself admitted that our opinion had been common. The reason is (as we say n. 562 *Id clarius*) that the council did not speak of simple priests, but of those who lack jurisdiction for reserved cases, which they do not lack at the point of death; also because Trent (as we prove at the place just cited) did not make a new law there, but only approved the ancient law of the church: but before the council, as Fagn. proves and Nav. himself admits, it was the common opinion that those who are cut off from the unity of the church are unable to give absolution.¹⁵

This passage contradicts the idea that jurisdiction in cases of grave necessity flows from divine and natural law which no human law can obstruct, by offering a counterexample. St. Alphonsus knew well that human ecclesiastical laws cease to bind when they would hinder the fulfillment of a moral precept belonging to the divine or natural law; yet he, St. Thomas, and many other theologians held that (in their times) certain priests could not validly absolve a dying man because they lacked jurisdiction. This fits with the understanding of jurisdiction expressed in this study, namely, that it belongs to the Church as a visible institution, governed solely by the external actions of human beings in positions of authority. The divine and natural law are not active agents, able to bestow ecclesiastical jurisdiction; rather, they are unchanging rules of truth and goodness against which all things are measured. The fact that jurisdiction might be used to accomplish a great good, which would be obligatory according to the divine and natural law of charity, has nothing to do with the presence or absence of jurisdiction; either it is already present or is supplied by *ecclesiastical* law or custom, or it is not.

3.3. Presumed jurisdiction contradicts the Code of Canon Law

If presumed jurisdiction were real, then canon 892 would be proved false. This canon, as discussed in section 2.5, states the following:

Canon 892, § 2. In urgent cases all confessors and in case of danger of death, all priests, are obliged in charity to hear confessions.

The theory of presumed jurisdiction contradicts this canon by saying that *all priests* are obliged in charity to hear confessions *in urgent cases*. If presumed jurisdiction is available to all priests in such

¹⁵ St. Alphonsus Liguori, *Theologia Moralis*, VI. n. 560; St. Thomas Aquinas, *Summa Theologica*, III. q. 82, ad 2.

cases, then charity obliges them to use it for the benefit of souls in serious need. But canon 892, § 2 says that only *confessors* are obliged in charity to hear confessions in urgent cases short of danger of death. If the theory of presumed jurisdiction is true, then this canon is *wrong*.

One cannot say that this canon should be set aside in urgent cases, because it describes the obligations that exist *in just such cases*. If it *could* be set aside, then it *would* be set aside for all the cases to which it speaks, making it empty and in fact false. But as one cannot suppose that the lawgiver made an empty and false law, it follows that priests who are not confessors have no obligation to hear confessions in urgent cases short of danger of death, which can only be explained as a consequence of their lack of jurisdiction.

3.4. Presumed jurisdiction undermines ecclesiastical authority and order

The pope has supreme and ordinary jurisdiction over the universal church.¹⁶ All other pastors in the Church are subordinate to him in receiving and exercising any jurisdictional power. A similar relation exists between a bishop with ordinary jurisdiction and the priests who assist him as pastors and confessors.

By deriving jurisdiction from the principles of law, or the mind of the Church, or from Jesus Christ Himself, the theory of presumed jurisdiction allows a subordinate to decide for himself that he has jurisdiction whenever he believes it is urgently needed, even if the pope explicitly refuses it to him. This nullifies the pope's supreme jurisdiction as a practical matter, and thus is both schismatic and heretical. It would allow any priest to set up as a confessor by claiming that he is meeting an urgent need, even in direct opposition to his superior. Human nature being what it is, the likely result is that priests would claim an autonomy similar to that of Protestant ministers, and nobody could deny them the right to presume that jurisdiction is supplied.

This may seem exaggerated, but it is logical and is now playing out in real life. If the mind of the Church supplies jurisdiction in urgent cases as a matter of principle, even in opposition to ecclesiastical law, then no act of human ecclesiastical authority can rise high enough to overrule or disable this supply of jurisdiction even in a particular case. Any new law or command, even from the Roman Pontiff, may be set aside on the basis that nobody has the right to legislate or to give orders against the principles of law or the good of souls.¹⁷ This is precisely the position of the SSPX and recognize-and-resisters, the largest contingent of traditionalist priests, who claim that the Church supplies whatever the Roman Pontiff unjustly denies — they, of course, being the judges of what is just or unjust. They have taken this so far as to operate a routine public ministry, for a period of decades, in defiance of the men whom they insist on recognizing as legitimate popes and bishops with ordinary jurisdiction. So much for ecclesiastical authority.

¹⁶ Vatican Council I, Sess. IV, chap. 3 (Denz. 1831)

¹⁷ The case would be parallel to that of a bishop in relation to common law, which Kelly thus describes: “No superior, therefore, other than the Roman Pontiff can validly or licitly deny a priest the right to use any power conceded to him by common law provided the circumstances required by the law are present. Therefore if a superior, other than the Roman Pontiff, attempts to limit these powers granted by the Code, he acts illicitly and his limitation may be ignored. For example, if a bishop should prohibit his priests from absolving from a certain censure even in danger of death, the bishop would act illicitly, and any priest could validly and licitly absolve from the censure in danger of death, contrary to the prohibition of the bishop.” (*op. cit.*, p. 86)

4. Conclusion

Based on the foregoing analysis, it appears that traditionalist priests during the post-Vatican II crisis do not receive supplied jurisdiction for confessions except for penitents who are in danger of death – that is, whose next confession could well be their last. Much more could be said, especially in answer to objections, but this brief version of the study ends here.

5. References

Books

Acta Apostolicae Sedis, VII, 1915. <http://www.vatican.va/archive/aas/documents/AAS-07-1915-ocr.pdf>

Aertnys, J., C.S.S.R., and C. A. Damen, C.S.S.R. *Theologia Moralis*. Marietti, 1950. 16th edition.

Aquinas, St. Thomas. *Summa Theologica*. Literally translated by the Fathers of the English Dominican Province. New York: Benziger, 1915-17.

II-I. QQ. 90-114. <https://archive.org/details/summatheologi08thom>

III. Q. 84 – Suppl. Q. 33. <https://archive.org/details/summatheologica034thom>

Augustine Bachofen, Rev. P. Charles, O.S.B., D.D. *A Commentary on the New Code of Canon Law*. St. Louis: B. Herder, 1918-1922.

All volumes: <https://archive.org/details/1917CodeOfCanonLawCommentary>

vol. 1: <https://archive.org/details/OnTheNewCodeOfCanonLawV1>

vol. 2: <https://archive.org/details/OnTheNewCodeOfCanonLawV2>

vol. 4: <https://archive.org/details/OnTheNewCodeOfCanonLawV4>

vol. 5: <https://archive.org/details/OnTheNewCodeOfCanonLawV5>

vol. 6: <https://archive.org/details/OnTheNewCodeOfCanonLawV6>

vol. 8: <https://archive.org/details/OnTheNewCodeOfCanonLawV8>

Ayrinhac, Rev. Henry A. *Penal Legislation in the New Code of Canon Law*. New York: Benziger, 1920. <https://archive.org/details/PenalLegislation/page/n123>

Ballerini, Rev. Antonio, S.J. and Dominic Palmieri, S.J. *Opus Theologicum Morale*. Rome: Giachetti, 1889-1892. vol. 5: <https://books.google.com/books?id=ADQpAQAAIAAJ>

Brothers of the Christian Schools. *Catechism Lessons on Vocation*. New York: La Salle Bureau, 1920. <https://books.google.com/books?id=2nIIAAAAYAAJ>

Brunsmann, Rev. John, S.V.D. *Handbook of Fundamental Theology*. Translated and edited by Rev. Arthur Preuss. St. Louis: B. Herder, 1932. vol. III.

Cappello, Rev. Felix, S.J. *Tractatus Canonico-Moralis De Censuris iuxta Codicem Iuris Canonici*. Rome: Marietti, 1933. 3rd edition.

Cappello, Rev. Felix, S.J. *Tractatus Canonico-Moralis De Sacramentis*. Rome: Marietti, 1953. 6th edition. vol. I: *De sacramentis in genere, de Baptismo, Confirmatione et Eucharistia*.

Cappello, Rev. Felix, S.J. *Tractatus Canonico-Moralis De Sacramentis*. Rome: Marietti, 1938. 3rd edition. vol. II-1: *De poenitentia*.

Conlon, Christopher P. *The Errors of Authentic Illusions*. 2 Nov. 2011.
<https://archive.org/details/TheErrorsOfauthenticIllusions>

Coronata, Rev. Matthaeus Conte a, O.F.M. Cap. *Institutiones Iuris Canonici*. Vol. IV: *De Delictis et Poenis*. IV ed. [1955]

d'Annibale, Cardinal Giuseppe. *Summula Theologiae Moralis*. Rome: Polyglot, 1896. 4th edition, part I. <https://archive.org/details/summulaetheologi00annigoog>

Daly, John. *Michael Davies: An Evaluation*. 2015 ed. <http://www.novusordowatch.org/wire/daly-davies-an-evaluation.htm>

Denzinger, Henry. *Enchiridion Symbolorum*. Translated by Roy J. Deferrari from the 30th edition (1954). Fitzwilliam, NH: Loreto, 2004.

Dogmatic Canons and Decrees. New York: Devin-Adair, 1912.
<https://archive.org/details/dogmaticcanonsan00unknuoft> (with ecclesiastical approbation)

Br. Francis of Mary of Angels. *For the Church: Forty Years of Catholic Counter-Reformation*. vol. 3: *Against the Schismatic Drift, 1969-1978*. <http://crc-internet.org/our-doctrine/catholic-counter-reformation/for-the-church/>

Hay, Right Rev. George. *The Sincere Christian*. Edinburgh: Blackwood, 1871, vol. 2.
<https://archive.org/details/worksofbishophay02hayuoft>

Hyland, Rev. Francis E., J.C.L. *Excommunication: Its Nature, Historical Development, and Effects*. Canon Law Studies, no. 49 (diss., Catholic University of America, 1928)
<https://books.google.com/books?id=RXEiAQAAIAAJ>

Kearney, Rev. Raymond A., S.T.D., J.C.L. *The Principles of Delegation*. Canon Law Studies, no. 55 (diss., Catholic University of America, 1929)

Kelly, Rev. James P., J.C.D. *The Jurisdiction of the Confessor According to the Code of Canon Law*. New York: Benziger, 1929.

Liguori, St. Alphonsus. *Theologia Moralis*. Regensburg: Manz, 1847. Book VI.
<https://books.google.com/books?id=qv5FAAAAcAAJ>

Liguori, St. Alphonsus. *The True Spouse of Jesus Christ*. New York: Benziger, 1913.

<https://archive.org/details/truespousechrist00liguuoft>

Mahoney, Canon E.J. *Priests' Problems*. 1957. Cited at Bellarmine Forums, “*Communicatio in sacris*,” <http://www.strobertbellarmine.net/viewtopic.php?f=2&t=86>

Merkelbach, Rev. Benedict H., O.P. *Summa Theologiae Moralis*. Brussels: Desclée, 1949. 8th edition. vol. III: *De Sacramentis*.

Miaskiewicz, Rev. Francis S., J.C.L. *Supplied Jurisdiction according to Canon 209*. Canon Law Studies, no. 122 (diss., Catholic University of America, 1940), https://archive.org/details/Supplied_jurisdiction_Miaskiewic_canon_209

Ottaviani, Cardinal Alfredo. *Institutiones Iuris Publici Ecclesiastici*. Rome: Typis Polyglottis Vaticanis, 1958. Cited at Bellarmine Forums, *Epikieia* thread, as translated by Mr. James Larrabee.

Peters, Dr. Edward, *The 1917 or Pio-Benedictine Code of Canon Law in English Translation*, San Francisco: Ignatius, 2001.

Pohle, Rt. Rev. Msgr. Joseph, Ph.D., D.D. *The Sacraments: A Dogmatic Treatise*. Vol. III: Penance. English version by Arthur Preuss. St. Louis: B. Herder, 1917. <https://archive.org/details/V10TheSacramentOfPenance>

Prümmer, Rev. Dominicus, O.P. *Manuale Theologiae Moralis*. Barcelona: Editorial Herder, 1946. Tenth edition. vol. III: *De sacramentis in genere et in specie*.

Ruby, Griff. *The Resurrection of the Roman Catholic Church*. <http://www.the-pope.com/church09.html>

Sabetti, Aloysio, S.J., and Timothy Barrett, S.J. *Compendium Theologiae Moralis*. New York: Frederick Pustet, 1920. 29th edition.

de Sales, St. Francis. *The Catholic Controversy*. London: Burns & Oates, 1909. 3rd ed. <https://archive.org/details/catholiccontrove00sain>

Schieler, Rev. Caspar, D.D. *Theory and Practice of the Confessional*. New York: Benziger, 1905. <https://archive.org/details/TheoryAndPracticeOfTheConfessional>

Semple, Rev. Henry Churchill, S.J. *Heaven Open to Souls*. New York: Benziger, 1916, <https://archive.org/details/heavenopentosoul00sempuoft>

Szal, Rev. Ignatius Joseph, A.B., J.C.L. *The Communication of Catholics with Schismatics: A Historical Synopsis and a Commentary*. Canon Law Studies, no. 264 (diss., Catholic University of America, 1948).

Tanquerey, Very Rev. Adolphe, S.S., D.D. *Synopsis Theologiae Moralis et Pastoralis*. Tomus Primus: *De Paenitentia, de Matrimonio et Ordine*. Tournai: Desclée, 1943. 12th edition.

Trent, Canons and Decrees of the Council. trans. by Rev. James Waterworth. London: Burns & Oates, 1888. <https://archive.org/details/thecanonsanddecr00unknuoft>

Van Noort, Msgr. Gerardus, S.T.D. *Dogmatic Theology*, vol. II: *Christ's Church*. Translated and revised by John J. Castelot, S.S., S.T.D., S.S.L. & William R. Murphy, S.S., S.T.D. Westminster, Maryland: The Newman Press, 1957.

Articles

Amado, Ramón Ruiz. “Huelgas de Burgos.” *The Catholic Encyclopedia*. New York: Encyclopedia Press, 1913. vol. 7, pp. 512-13. <https://archive.org/details/catholicencyclop07herbuoft>

Angles, Rev. Ramon, SSPX. *The Validity of Confessions & Marriages in the chapels of the Society of St. Pius X*. <http://sspx.org/en/validity-sspxs-confessions-marriages>, retrieved 17 Feb 2016

Barbara, Rev. Noël. *Écône Full Stop*. 1983.
<https://drive.google.com/file/d/19xWipXJiVqyQOIHUFaI3X252JIHQiyxT/>

Berutti, Rev. Cristoforo, O.P. “De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones.” *Jus Pontificium*, XIV (1934), pp. 51-66.

Boudinhon, Rev. Auguste-Marie, S.T.D., D.C.L. “Excommunication.” *The Catholic Encyclopedia*. New York: Encyclopedia Press, 1913. vol. 5, pp. 678-691. <https://books.google.com/books?id=kwQjAQAAlAAJ&pg=PA678>

Castle, Harold. “St. Alphonsus Liguori.” *The Catholic Encyclopedia*. New York: Encyclopedia Press, 1913. vol. 1, p. 340. <https://archive.org/details/catholicencyclop01herbuoft>

Cekada, Rev. Anthony. *Canon Law and Common Sense*. Sacerdotium 7, Spring 1993.
<http://www.traditionalmass.org/articles/article.php?id=14&catname=1>

Cekada, Rev. Anthony. *Home Alone?* 27 Feb 1993.
<http://www.traditionalmass.org/articles/article.php?id=55&catname=10>

Cekada, Rev. Anthony. *Traditional Priests, Legitimate Sacraments*. July 2003.
<http://www.traditionalmass.org/articles/article.php?id=20&catname=10>

Daly, John S. Supplied Jurisdiction: the Bishop and the Axiom.
<https://romeward.com/articles/239750535/supplied-jurisdiction-the-bishop-and-the-axiom>

Harty, Rev. J.M., D.D. “Notes and Queries: Theology.” *Irish Ecclesiastical Record*, Fourth Series, vol. XXI. March 1907. pp. 306-08. <https://books.google.com/books?id=QsxGAQAAMAAJ>

Lane, John. *The Question of Assistance at the Mass of a Priest Who Professes Communion With John Paul II as Pope*. http://www.strobertbellarmine.net/una_cum.html

O'Donnell, Rev. M.J. *When Does The Church Supply Jurisdiction?* Irish Ecclesiastical Review, Fifth Series, vol. xvi, 1920, pp. 499-502. <https://archive.org/details/irishecclesiasti16dubluoft>

Pope Pius XII, *Mystici Corporis Christi*, 29 June 1943,
<http://www.papalencyclicals.net/Pius12/P12MYSTI.HTM>

Scott, Rev. Peter, and Bishop Bernard Tissier de Mallerais, *Supplied jurisdiction & traditional priests*, <http://sspx.org/en/supplied-jurisdiction-traditional-priests>, retrieved 17 Feb 2016

Blogs, Forums, etc.

Bellarmino Forums. John Lane, owner.

- “*Communicatio in sacris*”, <http://www.strobertbellarmine.net/viewtopic.php?f=2&t=86>
- *Confession in Danger of Death*,
<http://www.strobertbellarmine.net/viewtopic.php?f=2&t=1301>
- *Epikēia*, <http://www.strobertbellarmine.net/viewtopic.php?f=2&t=1323>
- *False Shepards [sic]: Trad Clergy acting against Divine Law?*,
<http://www.strobertbellarmine.net/viewtopic.php?f=2&t=1581>
- *Joining the Bellarmine Forums*,
<http://www.strobertbellarmine.net/viewtopic.php?f=2&t=618>
- *Sedevacantism and the visibility of the Catholic Church*,
<http://www.strobertbellarmine.net/viewtopic.php?f=2&t=1468>
- *Supplied jurisdiction does not work for the conciliar Popes*,
<http://www.strobertbellarmine.net/viewtopic.php?f=2&t=1460>

Transalpine Redemptorists. Posts on *Communicatio in Sacris*.
<http://papastronsay.blogspot.com/search?q=communicatio+in+sacris&submit=Search>